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**STATE OF WASHINGTON  
KING COUNTY SUPERIOR COURT**

DANA RUSH and a class of similarly  
situated individuals,

Plaintiffs,

v.

STATE OF WASHINGTON,

Defendant.

NO. 21-2-04314-0 SEA

ORDER GRANTING PLAINTIFFS'  
MOTION FOR CLASS CERTIFICATION

**MATTER BEFORE THE COURT**

The Plaintiffs have moved for class certification. While Defendant does not agree with everything said in the motion, Defendant agrees that class certification is appropriate and stipulates to the class definition specified below.

**MATTERS CONSIDERED**

- Plaintiffs' Motion for Class Certification
- Declaration of Stephen K. Strong
- Declaration of Alexander F. Strong
- Declaration of Dana Rush
- Declaration of Gary Wolf
- Excerpts from Deposition of John Boesenberg
- Defendant State of Washington's Response to Motion for Class Certification
- The records and pleadings previously filed herein.

**FINDINGS**

1           1.       Considering the pleadings before it, this Court has conducted its analysis of the  
2 required elements for class certification under CR 23 and the Parties have agreed upon a class  
3 definition in this matter. By certifying the class as defined by agreement of the Parties, this Court  
4 makes no determination on the merits of the Plaintiffs' claims.

5           2.       Dana Rush brought this action on behalf of himself, a class of half-time or more  
6 part-time instructors at Defendant's community and technical colleges to obtain retirement benefits  
7 pursuant to a state retirement plan. The plan has two elements, a defined contribution element and  
8 a separate supplemental defined benefit element. Rush contends that Defendant violated both  
9 elements of the plan by requiring the defined class members to reestablish eligibility whenever the  
10 instructor does not teach for a period of time.

11           3.       The Parties have stipulated to the following class definition: All part-time (as  
12 defined in the State's retirement plan and RCW 28B.50.489 and 4891) academic employees who  
13 are working or who worked at the State community and technical colleges who did not work for a  
14 quarter or more and (1) did not have all their service count in determining the defined benefit portion  
15 of the State's retirement plan before or after the period of not working at a State community and  
16 technical college, or (2) after a period of time not working at a State community and technical  
17 college, were required to re-establish eligibility for the State's defined contribution plan even  
18 though they had not been terminated from employment and had not quit. The class includes all such  
19 instructors within the applicable statute of limitations period as determined by the Court.

20           4.       Under CR 23(a)(1), joinder of all members of the class is impracticable because the  
21 class contains sufficiently numerous class members and each class member's claim is relatively  
22 small compared to the burden of litigation.

23           5.       Under CR 23(a)(2), there are common questions of law to class members about the  
24 plan.

25           6.       This issue has commonly affected a sufficient number of plan participants.

26           7.       There is also a common question whether a class member participating in the

1 defined contribution portion of the plan has to reestablish eligibility in the plan when the class  
2 member did not work for a quarter or more when the class member was not terminated from  
3 employment and did not quit employment.

4 8. Under CR 23(a)(3), the claims of the class members as defined by the Parties'  
5 stipulation are typical of the class because, as alleged, Defendant did not count all service after the  
6 defined class members did not teach for a quarter as part of the class members' service in  
7 determining the class members' rights under the defined benefit portion of the plan and because  
8 Defendant made the class members reestablish eligibility for the defined contribution portion of the  
9 plan even though the class members were not terminated from employment and did not quit  
10 employment.

11 9. Under CR 23(a)(4), the defined putative class members are adequately represented  
12 because (i) their counsel have experience in litigating class actions on similar matters; (ii) a  
13 sufficient number of the putative class members have no conflict of interest with the class as a  
14 whole; and (iii) the lawsuit is not collusive.

15 10. The requirements of CR 23(a)(1)-(4) are met.

16 11. CR 23(b)(1) provides:

- 17 (1) The prosecution of separate actions by or against individual members of  
18 the class would create a risk of
- 19 (A) Inconsistent or varying adjudications with respect to individual  
20 members of the class which would establish incompatible  
21 standards of conduct for the party opposing the class, or
  - 22 (B) Adjudications with respect to individual members of the class  
23 which would as a practical matter be dispositive of the interests of  
24 the other members not parties to the adjudications or substantially  
25 impair or impede their ability to protect their interest...

26 CR 23(b)(1) applies here because the retirement plan at issue in this matter should have a  
uniform meaning for all class members.

12. The requirements of CR 23(b)(1) are met.

13. The requirements of CR 23(b)(2) are also met because the State has acted on

1 grounds generally applicable to the class with respect to determining retirement benefits under the  
2 plan.

3 14. A class action is the best way that all class members may obtain one binding  
4 decision. Without class certification, any decision in favor of an individual class member may bind  
5 Defendant only for one individual, not for others, and will have no legal effect on the Defendant's  
6 ability to deny relief for other defined class member.

7 15. The requirements of CR 23(b)(2) are met.

8 16. The law firm Bendich, Stobaugh & Strong is appointed as class counsel.

9 17. Classes certified under CR 23(b)(1) and (b)(2) are mandatory class actions, i.e. the  
10 results are binding on all class members, who may not choose to opt out of the class. *Sitton v. State*  
11 *Farm*, 116 Wn. App 245, 252 (2003). Because class certification is brought under CR 23(b)(1) and  
12 (b)(2) no notice need be given to the class. *Id.* The Court, however, retains authority under  
13 CR 23(d)(1) to provide the class members with notice if the Court later determines that notice is  
14 appropriate.

15 **ORDER**

16 The class is properly certified under CR 23(a), (b)(1), and (b)(2). The class is defined  
17 as:

18 All-time or more part-time (as defined in the State's retirement plan and RCW  
19 28B.50.489 and 4891) academic employees who are working or who worked at  
20 the State community and technical colleges who did not work for a quarter or  
21 more and (1) did not have all their service count in determining the defined  
22 benefit portion of the State's retirement plan before or after the period of not  
23 working at a State community and technical college, or (2) after a period of time  
24 not working at a State community and technical college, were required to  
25 reestablish eligibility for the State's defined contribution plan even though they  
26 had not been terminated from employment and had not quit. The class includes  
all such instructors within the applicable statute of limitations period as  
determined by the Court.

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2023.

1  
2  
3 THE HONORABLE MATTHEW W. WILLIAMS

4 Presented by:

5 ROBERT W. FERGUSON  
6 Attorney General

7 /s/ Eric A. Mentzer

8 ERIC A. MENTZER, WSBA #21243  
9 Senior Counsel

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12 *Attorneys for Defendant State of Washington*

13 Approved by:

14 BENDICH, STOBAUGH & STRONG, P.C.

15 /s/ David F. Stobaugh

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King County Superior Court  
Judicial Electronic Signature Page

Case Number: 21-2-04314-0  
Case Title: RUSH VS WASHINGTON STATE OF  
Document Title: ORDER RE GRANTING CLASS CERTIFICATION  
Signed By: Matt Williams  
Date: May 08, 2023



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Judge: Matt Williams

This document is signed in accordance with the provisions in GR 30.

Certificate Hash: EB84B7853CB038BA5F09ED31155B8D18BB90ECE2  
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Certificate Issued by: C=US, E=kcscefiling@kingcounty.gov, OU=KCDJA,  
O=KCDJA, CN="Matt Williams:  
dD/50zst7BGdnINZt8fBPA=="